

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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MARY E. CUNNINGHAM,

Plaintiff,

07 CV 4586 (MGC) (DCF)

-against-

**ANSWER WITH**  
**JURY DEMAND**

AMERICAN AIRLINES, INC.,

Defendants.

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Defendant, AMERICAN AIRLINES, INC., by and through its attorneys,

**RUTHERFORD & CHRISTIE, LLP**, as and for a Answer to the Complaint of plaintiff herein,  
respectfully sets forth as follows, upon information and belief:

FIRST: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “1” of the plaintiff’s Complaint.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “2 of the plaintiff”s Complaint.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “3” in the plaintiff’s Complaint and refers all questions of law to this Honorable Court.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “4” of the plaintiff’s Complaint.

FIFTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated as “5” of the plaintiff’s Complaint.

SIXTH: Denies the truth of the allegations contained in the paragraph designated as “6” of the plaintiff’s Complaint.

SEVENTH: Denies the truth of the allegations contained in the paragraphs designated as “7” of the plaintiff’s Complaint.

EIGHTH: Denies the truth of the allegations contained in the paragraphs designated as “8” of the plaintiff’s Complaint.

NINTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “9” in the plaintiff’s Complaint and refers all questions of law to this Honorable Court.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “10” in the plaintiff’s Complaint and refers all questions of law to this Honorable Court.

ELEVENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “11” in the plaintiff’s Complaint

and refers all questions of law to this Honorable Court.

TWELFTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “12” in the plaintiff’s Complaint and refers all questions of law to this Honorable Court.

THIRTEENTH: Denies knowledge or information sufficient to form a belief as to the truth or accuracy of the allegations contained in the paragraph designated “13” in the plaintiff’s Complaint.

FOURTEENTH: Denies the truth of the allegations contained in the paragraphs designated as “14” of the plaintiff’s Complaint.

**AS AND FOR A FIRST SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

FIFTEENTH: The defendant took all necessary measures to avoid the occurrence alleged in plaintiff’s Complaint.

**AS AND FOR A SECOND SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

SIXTEENTH: Pursuant to tariffs on file with the Department of Transportation of the United States, defendant’s liability, if any, is partial only and limited.

**AS AND FOR A THIRD SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

SEVENTEENTH: The liability of defendant, if any, with respect to the injuries allegedly sustained by plaintiff, is limited in accordance with all conditions of carriage, conditions of contract and tariffs.

**AS AND FOR A FOURTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

EIGHTEENTH: If the plaintiff sustained or suffered damages as alleged in the Complaint, which defendant expressly denies, such damages were sustained by reason of the negligence or other culpable conduct of persons or entities over whom defendant exercised no control or supervision, and not by reason of any negligent or culpable conduct of defendant.

**AS AND FOR A FIFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

NINETEENTH: If the plaintiffs sustained or suffered damages alleged in the Complaint, which defendant expressly denies, such damages were caused, in whole or in part, by the negligence of plaintiff or any other wrongful conduct of plaintiff and to the extent of their culpability, plaintiff is barred from recover or, alternatively, shall have their damages reduced in the proportion that his culpable conduct bears to all conduct causing or contributing to said damages.

**AS AND FOR A SIXTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTIETH: The answering defendant, pursuant to §1412 of the CPLR, alleges upon information and belief that if the plaintiffs sustained any injuries or damages at the time and place alleged in the Complaint, such injuries or damages were the result of the culpable conduct of the plaintiff because of the plaintiff's negligence or assumption of risk. Should it be found, however, that defendant is liable to the plaintiff herein, any liability being specifically denied, then the answering defendant demands that any damages that are found to be apportioned among the respective parties according to the degree of responsibility each is found to have in the occurrence, in proportion to the entire measure of responsibility for the occurrence.

**AS AND FOR AN SEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-FIRST: Upon information and belief, plaintiff's economic loss, if any, as specified in §4545 of the CPLR, was or will be replaced or indemnified, in whole or in part, from collateral sources, and the answering defendant is entitled to have the Court consider the same in determining such special damages as provided in §4545 of CPLR.

**AS AND FOR AN EIGHTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SECOND: Upon information and belief, this Court has not acquired in personam jurisdiction over the answering defendant based upon improper service of process.

**AS AND FOR A NINTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-THIRD: Plaintiff's Complaint fails to state a cause of action against the answering defendant.

**AS AND FOR A TENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-FOURTH: That all risks and dangers of losses connected with the situation alleged in the complaint were at all times and places mentioned obvious and apparent and were known to the plaintiff and were voluntarily assumed by him.

**AS AND FOR A ELEVENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-FIFTH: That any injuries or damages which may have been sustained, if any, were caused in whole or in part by an intervening event.

**AS AND FOR A TWELFTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SIXTH: If answering defendant is found liable, and such liability is less than or equal to 50% of the total liability of all persons and/or entities who may be found liable, then answering defendant's liability shall be limited to their equitable shares, pursuant to Article 16 of the CLPR.

**AS AND FOR A THIRTEENTH SEPARATE  
AND COMPLETE AFFIRMATIVE DEFENSE**

TWENTY-SEVENTH: Plaintiff's claims are barred in whole or in part by the doctrine of preemption under the provisions of the Federal Aviation Act and Airline Deregulation Act of

1978.

**DEMAND FOR A JURY TRIAL**

TWENTY-EIGHTH: Defendant demands a trial by jury as to any and all issues raised in the Complaint and this Answer which are triable before a jury.

**WHEREFORE**, defendant, AMERICAN AIRLINES, INC., demands judgment dismissing the Complaint herein, together with costs and disbursements incurred in this action.

Dated: New York, New York  
June 1, 2007

Respectfully submitted,

**RUTHERFORD & CHRISTIE, LLP**

BY: s/ David S. Rutherford  
David S. Rutherford (DR 8564)  
Attorneys for Defendant  
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TO: The Jacob D. Fuchsberg Law Firm, LLP  
Attorneys for Plaintiff  
500 Fifth Avenue, 45<sup>th</sup> Floor  
New York, New York 10110  
(212) 869-3500  
Attention: Melvin C. Hartman, Esq.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing **ANSWER WITH JURY DEMAND and NOTICE TO TAKE DEPOSITION UPON ORAL EXAMINATION** was furnished via first-class mail to the offices of The Jacob D. Fuchsberg Law Firm, LLP, 500 Fifth Avenue, 45<sup>th</sup> Floor, New York, New York 10110, Attention: Melvin C. Hartman, Esq., on this 1<sup>st</sup> day of June, 2007

s/ David S. Rutherford

David S. Rutherford (DSR 8564)